

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00260-MR**

S. SHANE SMITH,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
JUSTIN LYTLE,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on Plaintiff's Request to File Supplemental Response to the Court's 12/03/21 Order [Doc. 66], which the Court construes as a request for accommodations.

The instant civil rights case is presently scheduled for a jury trial commencing on Tuesday, March 15, 2022 at 9:00 a.m. [See Doc. 67]. The Court recently addressed the *pro se* incarcerated Plaintiff's request for accommodations for trial, ordering, among other things, that Plaintiff be allowed to bring a non-networked laptop to trial to accommodate his need for note taking.¹ [Id.]. Plaintiff now requests additional accommodations for trial

¹ Plaintiff was born without fingers and toes.

after recent events at his place of incarceration, Foothills Correctional Institution (“Foothills”) in Morganton, North Carolina. [Doc. 66].

Plaintiff asserts that, on January 4, 2022, the Foothills computer technician checked Plaintiff’s laptop and advised Plaintiff that he needed to perform more regular backups of his files because, given the age of Plaintiff’s laptop, it could fatally crash at any time. [Doc. 66 at 2]. Later that day, prison officials, on order by the Foothills Warden, confiscated USB flash drives that had previously been issued to Plaintiff for the sole purpose of backing up his computer. Without these USB flash drives, Plaintiff is unable to back up his computer files. [Id.]. Plaintiff avers that he has been explicitly authorized to possess these flash drives and that North Carolina Department of Public Safety policy permits the use of such storage media. [Id.]. Plaintiff asks the Court to order the Warden at Foothills to return or replace the confiscated flash drives.

Next, Plaintiff states that he is being prevented from ordering special rubber-grip pens that he needs for signing documents and performing written tasks that cannot be completed on a computer.² [Id. at 66]. Plaintiff avers that he has tried other rubber-grip style pens and they are uncomfortable and

² Plaintiff needs Paper-Mate 1.4B rubber-grip click pen (Black) and Bic Gelocity rubber-grip click pen (Red).

painful to hold. Plaintiff avers that he has identified a seller of the pens he needs, FSI Office, but that the Warden at a neighboring institution “stated emphatically” that Plaintiff is not allowed to purchase these pens. Plaintiff also states that other non-disabled prisoners can order and receive similar items through the mail. [Id. at 3].

The Court will grant Plaintiff’s request for additional accommodations and order the Warden at Foothills Correctional Institution to immediately return or replace the confiscated USB flash drives and allow Plaintiff to order the pens he requires as stated in this Order. Given the approaching trial date, the Court will also direct defense counsel to ensure that Plaintiff is provided these accommodations with all due speed.

ORDER

IT IS, THEREFORE, ORDERED that the Plaintiff’s Request for Accommodations [Doc. 66] is **GRANTED** as stated in this Order.

IT IS FURTHER ORDERED that the Warden at Foothills Correctional Institution shall immediately return or replace the USB flash drives that were confiscated from Plaintiff and immediately allow Plaintiff to order (or order for the Plaintiff) the pens he requires as stated in this Order.


IT IS FURTHER ORDERED that defense counsel shall ensure that the Warden at Foothills Correctional Institution promptly complies with this Order

and provide the Court with a status update within seven (7) days of this Order.

The Clerk's Office is respectfully directed to send a copy of this Order to all parties and to the Warden of the Foothills Correctional Institution, 5150 Western Avenue, Morganton, NC 28655.

IT IS SO ORDERED.

Signed: February 4, 2022



Martin Reidinger
Chief United States District Judge

